

TOPIC TITLE: DEWEY BURDOCK UIC PERMITTING

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ISSUE SUMMARY:

On March 6, 2017 EPA issued two draft Underground Injection Control (UIC) Area Permits to Powertech (USA) Inc., for injection activities related to uranium recovery near Edgemont, South Dakota. The draft permits include a UIC Class III Area Permit for injection wells for the in-situ recovery (ISR) of uranium and a UIC Class V Area Permit for deep injection wells for disposal of treated ISR process waste fluids. The EPA is also proposing an aquifer exemption (AE) approval in connection with the draft UIC Class III Area Permit.

During the public comment period for the draft permits over a thousand verbal and written comments were received, the majority of which were in opposition to these draft permits and proposed AE. Because of tribal concerns raised over impacts to this traditionally important area of the Black Hills and the proximity of this project to the Dakota Access Pipeline where some of the same Tribes were engaged (e.g., Standing Rock Sioux, Cheyenne River Sioux), we expect sustained high visibility of and interest in this proposed permitting activity.

The Regional UIC program has reviewed all public comments and has recommended to Regional senior leadership that specific provisions in both draft permits and the associated AE be substantively changed in response to these comments, particularly those submitted by Powertech. As a result, EPA expects to re-issue its draft permits and proposed AE for additional public comment.

Powertech has expressed its frustration over the length of time elapsed and remaining for the region to evaluate this complex proposal and make its permitting decisions.

UPCOMING MILESTONES / DEADLINES / DECISION POINTS:

- August 2019 – Re-issuance of draft Class III and V UIC permits and proposed AE for public comment which will include a one-day public hearing in South Dakota.
- TBD – Consultation meetings with three interested tribes (Oglala Sioux, Standing Rock Sioux, and Cheyenne River Sioux Tribes).

BACKGROUND:

- The proposed ISR project uses a series of Class III injection wells to inject a solution into the ore body to mobilize uranium. The uranium-bearing solution is then collected through recovery wells, pumped to a processing plant where the uranium is separated, and the waste solution is treated. That treated solution is disposed of into Class V deep injection wells.
- EPA has primacy for these classes of UIC wells in South Dakota. These UIC permits will be the first EPA has directly issued for uranium recovery nationwide and include some requirements that will be new to the uranium ISR industry to ensure adequate protection of underground sources of drinking water (USDWs).
- The proposed project site is near the Black Hills, where at least 38 tribal nations have historic claims or consider this area to be sacred. Through past consultation, several tribes have raised concerns about potential impacts on historic properties of cultural importance. We will continue to encourage interested tribes to consult with us through the permitting process.

- Other agencies which have a role in permitting this site:
 - South Dakota actions: Conditional program approval in late 2012/early 2013 for a Large Scale Mine Permit, Groundwater Discharge Permit, and Water Rights Permits for two aquifers. Hearings before the State Water and Mining Boards were under way until Nov 2013 when the State Boards suspended further state agency actions until the completion of NRC and EPA actions.
 - Nuclear Regulatory Commission (NRC) actions: Final License, Final Supplemental EIS (FSEIS) and NHPA Section 106 Programmatic Agreement finalized in April 2014. On April 30, 2015, the Atomic Safety and Licensing Board (ASLB) issued a decision on contentions raised by the Oglala Sioux Tribe (OST) and Powertech during the NRC process (including adequacy of the NHPA assessment). That decision was appealed, and the full Commission recently upheld the initial decision. The OST appealed the full Commission decision to federal court. The D.C. Circuit court determined that the NRC should not have allowed its license to remain in effect after it found significant deficiencies in its compliance with NEPA. It did not vacate the license, however, because of a concern about disruptive consequences. The Court specifically concluded that the NRC decision-making process is not complete and declined to consider the merits of any substantive issues. This means that the OST will have an opportunity to appeal once the NRC process is complete. The significant deficiency, as articulated by the Commission, is that the “cultural, historical, and religious sites of the Oglala Sioux Tribe have not been adequately catalogued” and therefore the EIS “does not include mitigation measures sufficient to protect this Native American tribe’s cultural, historical, and religious sites that may be affected by the Powertech project.” On remand, the ASLB left the license in place, consistent with the D.C. Circuit opinion, but required Powertech to provide the ASLB and other parties notice 60 days in advance of any activities. To meet its NEPA obligations, the NRC has been engaged in a process with the parties to develop and finalize the methodology to use in its site survey.

REGION 8 LEADS AND KEY EXTERNAL STAKEHOLDERS:

Region 8 Contacts: Douglas Minter, 312-6079, Valois Robinson, 312-6276

HQ Contacts: None at this time

External Stakeholders and Contacts: Numerous interested stakeholders, contact UIC program for more information

LINKS TO MAPS OR GEOSPACIAL DATA SOURCES

None at this time

